

Oglala Sioux Seek DC Circ. Review Of Uranium Mine Approval

Share us on: By [[HYPERLINK "https://www.law360.com/articles/894958"](https://www.law360.com/articles/894958)]

Law360, New York (February 23, 2017, 2:14 PM EST) -- The [[HYPERLINK "https://www.law360.com/agencies/oglala-sioux-tribe"](https://www.law360.com/agencies/oglala-sioux-tribe)] has asked the D.C. Circuit to review the environmental assessment and license given to the operators of the Dewey-Burdock In-Situ Uranium Mine in South Dakota, saying that the approval process did not follow the National Environmental Policy Act or a number of other federal laws.

Commented [SV1]: February 23, 2017

The petition challenges a bid by Azarga Uranium Corp. to mine about 13,000 acres of land in western South Dakota near the Wyoming border, which the company says has uranium resources measured in the millions of pounds. The short, four-page filing submitted Tuesday did not provide an explanation of how the U.S. [[HYPERLINK "https://www.law360.com/agencies/nuclear-regulatory-commission"](https://www.law360.com/agencies/nuclear-regulatory-commission)]'s environmental analysis, record of decision and license issuance violated NEPA and other federal laws.

The Oglala Sioux, however, have fought the mine for years, although it is not planned to be located within the tribe's reservation. In a 2015 filing with the NRC, the tribe said the mine threatened its ancestral land and poses a hazard to cultural and water resources.

"The Final EIS, [record of decision], memorandum and order, and materials license violate the Administrative Procedures Act," the petition said, alleging it also violated NEPA, the National Historic Preservation Act and the Atomic Energy Act.

In December, the NRC commission released a decision on issues of contention between the mining company and the tribe as well as other parties opposing the mine, which allowed the NRC's license for the project to continue while the tribe and the company proceeded to discuss historic and cultural resources issues, according to a statement by Azarga.

When the decision was issued, the company said it would continue to support consultations with the tribe to efficiently remedy outstanding issues.

"We are pleased that the Company's NRC License remains in good standing and that the petitions for review of the [Atomic Safety and Licensing Board] decision lodged by the Intervenor were dismissed by the NRC Commission," Blake Steele, president of the company said in a statement after the decision's release.

The project received its environmental review and license in 2014, but the tribe and others objected. The ASLB then heard disputes in the matter that year and decided on seven issues raised by the tribe and others opposing the mine. That decision sided with the company on five points but let contentions by the tribe over historic and cultural resources continue.

The company estimated that over the project's expected 16-year life, it will produce 9.7 million pounds of useful uranium with a payback period in the third quarter of the second year of production.

According to the company's website, it is in the process of getting final regulatory approvals to begin mining from other federal agencies including the [[HYPERLINK "https://www.law360.com/agencies/u-s-environmental-protection-agency"](https://www.law360.com/agencies/u-s-environmental-protection-agency)].

Representatives from the company and the tribe did not return requests for comment.

The tribe is represented by Jeffrey C. Parsons of the Western Mining Action Project.

Counsel information for Azarga was not available on Thursday.

The case is Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission et al., case number [[HYPERLINK "https://www.law360.com/cases/58ae1cab860f601260000175"](https://www.law360.com/cases/58ae1cab860f601260000175)], in the U.S. Appeals Court for the District of Columbia Circuit.

NRC Says Oglala Sioux Uranium Mine Challenge Is Premature

By [[HYPERLINK "https://www.law360.com/articles/903470/nrc-says-ogla-sioux-uranium-mine-challenge-is-premature"](https://www.law360.com/articles/903470/nrc-says-ogla-sioux-uranium-mine-challenge-is-premature)]

Law360, New York (March 17, 2017, 6:34 PM EDT) -- The federal government on Friday urged the D.C. Circuit to nix the [[HYPERLINK "https://www.law360.com/agencies/ogla-sioux-tribe"](https://www.law360.com/agencies/ogla-sioux-tribe)]'s challenge of the environmental assessment and license given to the operators of a South Dakota uranium mine, saying the U.S. [[HYPERLINK "https://www.law360.com/agencies/nuclear-regulatory-commission"](https://www.law360.com/agencies/nuclear-regulatory-commission)] hasn't yet issued a final order on the project.

Commented [SV2]: March 17, 2017

The Oglala Sioux are fighting a bid by Azarga Uranium Corp. to mine about 13,000 acres of land in western South Dakota near the Wyoming border. The tribe, which has been fighting the Dewey-Burdock In-Situ Uranium Mine project for years, [[HYPERLINK "https://www.law360.com/articles/894958"](https://www.law360.com/articles/894958)] that the NRC's environmental analysis, record of decision and license issuance violated the National Environmental Policy Act and other federal laws.

However, the NRC argued in a brief that even though it issued a license for the project, it is still addressing historical and cultural resource challenges raised by the tribe, which is permitted by agency regulations and could potentially result in the license being modified or revoked.

Therefore, there hasn't been a final disposition of the tribe's claims, meaning the D.C. Circuit lacks jurisdiction to review the NRC's action, the brief said.

“In fact, the latest determination by the commission on these issues is that some of the tribe’s concerns have merit and that the NRC staff accordingly needs to do additional work before the tribe’s adjudicatory claims can be resolved,” the brief stated. “The most recent commission order in the proceeding thus directed ‘that the proceeding remain open’ to allow this additional work to occur, after which final actions could potentially be taken to disposition the tribe’s claims.”

The project received its environmental review and license in 2014, but the tribe and others objected. The NRC’s Atomic Safety and Licensing Board then heard disputes in the matter that year and decided on seven issues raised by the tribe and others opposing the mine. That decision sided with the company on five points but let contentions by the tribe over historic and cultural resources continue.

In a 2015 filing with the NRC, the tribe said the mine threatened its ancestral land and posed a hazard to cultural and water resources.

In December, the NRC released a decision on issues of contention between Azarga and the tribe as well as other parties opposing the mine, which allowed the NRC’s license for the project to continue while the tribe and the miner proceeded to discuss historic and cultural resources issues.

When the NRC issues its final order addressing the outstanding issues, the tribe is free to challenge the order in court, the government’s brief said.

“The petition for review the tribe has filed here, however, is incurably premature,” the brief stated.

Azarga estimated that over the project’s expected 16-year life, it will produce 9.7 million pounds of useful uranium with a payback period in the third quarter of the second year of production. Earlier this month, the company said it had received draft underground injection control permits from the [[HYPERLINK "https://www.law360.com/agencies/u-s-environmental-protection-agency"](https://www.law360.com/agencies/u-s-environmental-protection-agency)].

The government is represented by NRC Solicitor Andrew P. Averbach and senior attorney James E. Adler, as well as Lane N. McFadden of the [[HYPERLINK "https://www.law360.com/agencies/u-s-department-of-justice"](https://www.law360.com/agencies/u-s-department-of-justice)].

The tribe is represented by Jeffrey C. Parsons of the Western Mining Action Project.

Azarga, which intervened on behalf of the government, is represented by Anthony J. Thompson and Christopher S. Pugsley of Thompson & Pugsley PLLC.

The case is Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission et al., case number [[HYPERLINK "https://www.law360.com/cases/58ae1cab860f601260000175"](https://www.law360.com/cases/58ae1cab860f601260000175)], in the U.S. Appeals Court for the District of Columbia Circuit.

Tribe Says DC Circ. Can Hear Uranium Mine Challenge

Share us on: By [[HYPERLINK "https://www.law360.com/articles/906228/tribe-says-dc-circ-can-hear-uranium-mine-challenge"](https://www.law360.com/articles/906228/tribe-says-dc-circ-can-hear-uranium-mine-challenge)]

Law360, New York (March 27, 2017, 1:31 PM EDT) -- The [[HYPERLINK "https://www.law360.com/agencies/oglala-sioux-tribe"](https://www.law360.com/agencies/oglala-sioux-tribe)] on Friday fought the federal government's bid to dismiss a suit challenging an environmental assessment and license given to the operators of a South Dakota uranium mine, shooting back at the U.S. [[HYPERLINK "https://www.law360.com/agencies/nuclear-regulatory-commission"](https://www.law360.com/agencies/nuclear-regulatory-commission)]'s argument that the D.C. Circuit lacks jurisdiction.

Commented [SV3]: March 27, 2017

In the tribe's challenge of a bid from Powertech (USA) Inc. to mine about 13,000 acres of land in western South Dakota near the Wyoming border, the NRC said earlier this month that despite the issuance and affirmation of an effective license, the [[HYPERLINK "https://www.law360.com/articles/903470/nrc-says-oglala-sioux-uranium-mine-challenge-is-premature"](https://www.law360.com/articles/903470/nrc-says-oglala-sioux-uranium-mine-challenge-is-premature)] and so the appeals court does not have jurisdiction to hear the tribe's petition for review under the Hobbs Act.

The tribe fought this argument Friday, saying that the NRC concedes that numerous orders have been issued and that each of these became a final order upon the entry of a December order that resolved all administrative appeals.

"This case is therefore properly filed under the Hobbs Act where NRC staff granted a license and then the [Atomic Safety Licensing Board] and commission both issued orders finding the NRC staff had violated [the National Environmental Policy Act] and [National Historic Preservation Act] yet left the license to process uranium and create waste as remaining valid and effective," the tribe said. "The tribe maintains that because the December 2016 order is final as to the grant of the license, it thereby gives rise to Hobbs Act review."

The tribe, which [[HYPERLINK "https://www.law360.com/articles/894958"](https://www.law360.com/articles/894958)] the Dewey-Burdock In-Situ Uranium Mine project for years, had claimed in a petition that the NRC's environmental analysis, record of decision and license issuance violated NEPA and other federal laws.

The NRC argued in its motion to dismiss that even though it issued a license for the project, it is still addressing historical and cultural resource challenges raised by the tribe, which is permitted by agency regulations and could potentially result in the license being modified or revoked.

The project received its environmental review and license in 2014, but the tribe and others objected. The NRC's Atomic Safety and Licensing Board then heard disputes in the matter that year and decided on seven issues raised by the tribe and others opposing the mine.

That decision sided with the company on five points but let contentions by the tribe over historic

and cultural resources continue. In a 2015 filing with the NRC, the tribe said the mine threatened its ancestral land and posed a hazard to cultural and water resources.

In December, the NRC released a decision on issues of contention between the company and the tribe as well as other parties opposing the mine, which allowed the NRC's license for the project to continue while the tribe and the miner proceeded to discuss historic and cultural resources issues.

"We're trying to remedy decided violations of federal law," Jeffrey C. Parsons, an attorney for the tribe, told Law360 Monday. "The agency failed to comply with the National Environmental Policy Act and the National Historic Preservation Act, yet refuses to rescind the license that came out of those flawed processes."

An NRC spokesperson told Law360 Monday the agency will let its legal filings speak for themselves.

Christopher S. Pugsley, an attorney for the company, said it will be filing a response to the agency's motion to dismiss and that the company is in support of the motion to dismiss.

"We believe there are adequate legal grounds to dismiss the case at this stage," he told Law360.

The government is represented by NRC Solicitor Andrew P. Averbach and senior attorney James E. Adler, as well as Lane N. McFadden of the [[HYPERLINK "https://www.law360.com/agencies/u-s-department-of-justice"](https://www.law360.com/agencies/u-s-department-of-justice)].

The tribe is represented by Jeffrey C. Parsons of the Western Mining Action Project and Travis E. Stills of Energy & Conservation Law.

Powertech, which has filed to intervene on behalf of the government, is represented by Anthony J. Thompson and Christopher S. Pugsley of Thompson & Pugsley PLLC.

The case is Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission et al., case number [[HYPERLINK "https://www.law360.com/cases/58ae1cab860f601260000175"](https://www.law360.com/cases/58ae1cab860f601260000175)], in the U.S. Appeals Court for the District of Columbia Circuit.

Powertech Backs Feds' Bid To Nix Uranium Mine Challenge

Share us on: By [[HYPERLINK "https://www.law360.com/articles/906773/powertech-backs-feds-bid-to-nix-uranium-mine-challenge"](https://www.law360.com/articles/906773/powertech-backs-feds-bid-to-nix-uranium-mine-challenge)]

Law360, New York (March 28, 2017, 2:25 PM EDT) -- Powertech on Monday urged the D.C. Circuit to toss the [[HYPERLINK "https://www.law360.com/agencies/oglala-sioux-tribe"](https://www.law360.com/agencies/oglala-sioux-tribe)]'s suit against

Commented [SV4]: March 28, 2017

the federal government challenging an environmental assessment and license given to the company to operate a South Dakota uranium mine, arguing there was never a final decision issued.

Powertech (USA) Inc., which filed to intervene in the suit, filed a response in support of the [[HYPERLINK "https://www.law360.com/articles/903470/nrc-says-oglala-sioux-uranium-mine-challenge-is-premature"](https://www.law360.com/articles/903470/nrc-says-oglala-sioux-uranium-mine-challenge-is-premature)] the [[HYPERLINK "https://www.law360.com/articles/894958"](https://www.law360.com/articles/894958)] of the company's effort to mine about 13,000 acres of land in western South Dakota near the Wyoming border. The company said there was no final decision on the entire proceeding, arguing there continue to be ongoing discussions and negotiations to cure the deficiencies identified by the [[HYPERLINK "https://www.law360.com/agencies/nuclear-regulatory-commission"](https://www.law360.com/agencies/nuclear-regulatory-commission)]'s Atomic Safety and Licensing Board and sustained by the commission.

"An extended time line for resolution of these issues is not envisioned, as Powertech has offered parameters for a site survey to cure the deficiencies noted by the ASLB and the commission that were previously accepted by petitioner and utilized by other consulted Native American tribes," the company said. "Given that these discussions are ongoing, it would not be prudent for this court to hear this appeal at this time when a resolution to this matter will be achieved and petitioner may appeal other issues decided adversely to them."

Powertech further said it submitted a license application to the NRC for its consideration in 2009 and also applied for additional permits and approvals with the [[HYPERLINK "https://www.law360.com/agencies/u-s-environmental-protection-agency"](https://www.law360.com/agencies/u-s-environmental-protection-agency)] and the state of South Dakota. The reviews of these permits and approvals, Powertech said, are still ongoing and may be further delayed "due to the ongoing nature of the proceedings associated with Powertech's NRC license."

The NRC said earlier this month that despite the issuance and affirmation of an effective license, the NRC has not issued a "final order" and so the appeals court does not have jurisdiction to hear the tribe's petition for review under the Hobbs Act. The NRC argued in its motion to dismiss that even though it issued a license for the project, it is still addressing historical and cultural resource challenges raised by the tribe, which is permitted by agency regulations and could potentially result in the license being modified or revoked.

The tribe [[HYPERLINK "https://www.law360.com/articles/906228/tribe-says-d-c-circ-can-hear-uranium-mine-challenge"](https://www.law360.com/articles/906228/tribe-says-d-c-circ-can-hear-uranium-mine-challenge)] on March 24, saying that the NRC concedes that numerous orders have been issued and that each of these became a final order upon the entry of a December order that resolved all administrative appeals.

The tribe, which has been fighting the Dewey-Burdock In-Situ Uranium Mine project for years, had claimed in a petition that the NRC's environmental analysis, record of decision and license issuance violated the National Environmental Policy Act and other federal laws.

The project received its environmental review and license in 2014, but the tribe and others objected. The NRC's Atomic Safety and Licensing Board then heard disputes in the matter that year and decided on seven issues raised by the tribe and others opposing the mine.

That decision sided with the company on five points but let contentions by the tribe over historic and cultural resources continue. In a 2015 filing with the NRC, the tribe said the mine threatened its ancestral land and posed a hazard to cultural and water resources.

In December, the NRC released a decision on issues of contention between the company and the tribe as well as other parties opposing the mine, which allowed the NRC's license for the project to continue while the tribe and the miner proceeded to discuss historic and cultural resources issues.

"The NRC's motion to dismiss rests on sound legal grounds, and we believe ... the additional work ongoing at the NRC needs to be resolved prior to further litigation of these issues in the federal court of appeals," Christopher S. Pugsley, an attorney for the company, told Law360 Tuesday.

Travis Stills, an attorney for the tribe, told Law360 he and his co-counsel are reviewing the company's filing and will be responding in due course.

An NRC spokesperson said Tuesday the agency will let its court filings speak for themselves.

Powertech is represented by Anthony J. Thompson and Christopher S. Pugsley of Thompson & Pugsley PLLC.

The federal government is represented by NRC Solicitor Andrew P. Averbach and senior attorney James E. Adler, as well as Lane N. McFadden of the [[HYPERLINK "https://www.law360.com/agencies/u-s-department-of-justice"](https://www.law360.com/agencies/u-s-department-of-justice)].

The tribe is represented by Jeffrey C. Parsons of the Western Mining Action Project and Travis E. Stills of Energy & Conservation Law.

The case is Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission et al., case number [[HYPERLINK "https://www.law360.com/cases/58ae1cab860f601260000175"](https://www.law360.com/cases/58ae1cab860f601260000175)], in the U.S. Appeals Court for the District of Columbia Circuit.

Tribe Asks DC Circ. To Undo License For SD Uranium Mine

Share us on: By [[HYPERLINK "https://www.law360.com/articles/939322/tribe-asks-dc-circ-to-undo-license-for-sd-uranium-mine"](https://www.law360.com/articles/939322/tribe-asks-dc-circ-to-undo-license-for-sd-uranium-mine)]

Law360, New York (June 28, 2017, 6:04 PM EDT) -- The [[HYPERLINK "https://www.law360.com/agencies/ogla-sioux-tribe"](https://www.law360.com/agencies/ogla-sioux-tribe)] pressed the D.C. Circuit on Tuesday to revoke a license given by the federal government to the company behind a proposed uranium

Commented [SV5]: June 28, 2017

mine, questioning why it has been left intact when related environmental and historic preservation issues have been identified.

The tribe, which [[HYPERLINK "https://www.law360.com/articles/894958"](https://www.law360.com/articles/894958)] Powertech (USA) Inc.'s bid to mine roughly 13,000 acres of land in western South Dakota for years, filed an opening brief in its challenge claiming that the U.S. [[HYPERLINK "https://www.law360.com/agencies/nuclear-regulatory-commission"](https://www.law360.com/agencies/nuclear-regulatory-commission)]'s environmental analysis, record of decision and license issuance flout the National Environmental Policy Act and the National Historic Preservation Act.

The Oglala Sioux said the NRC had affirmed its Atomic Safety and Licensing Board's finding that the environmental analysis did not sufficiently consider the so-called Dewey-Burdock in-situ uranium recovery project's impacts on Native American religious, historic and cultural resources and that required meaningful government-to-government consultation between the tribe and the commission had not occurred.

"Despite this finding of violations and a lack of compliance with both NEPA and the NHPA, the NRC nevertheless allowed the [record of decision] and the license itself to stand," the tribe said, urging the appeals court to vacate all three documents and order the commission to "comply with its statutory duties."

Commented [SV6]: What is the third document?

Among other things, the Oglala Sioux also claimed that the NRC failed to adequately scrutinize effects associated with storing, moving and disposing radioactive waste, failed to require the collection of baseline water quality data and failed to mandate a requisite discussion of means for mitigating the impact on cultural sites and the environment and how effective those means are.

The tribe further argued that a December order from the NRC finalized the license issuance and is thus a final agency action under the Hobbs Act, so the D.C. Circuit has jurisdiction to consider its claims.

The NRC previously said in a motion to dismiss that it is still addressing challenges raised by the Oglala Sioux that could result in the license being modified or revoked, meaning that it has [[HYPERLINK "https://www.law360.com/articles/903470/nrc-says-ogla-la-sioux-uranium-mine-challenge-is-premature"](https://www.law360.com/articles/903470/nrc-says-ogla-la-sioux-uranium-mine-challenge-is-premature)] reviewable under the Hobbs Act and that the appeals court should not grant the tribe's petition for review.

Powertech, which has intervened, [[HYPERLINK "https://www.law360.com/articles/906773/powertech-backs-feds-bid-to-nix-uranium-mine-challenge"](https://www.law360.com/articles/906773/powertech-backs-feds-bid-to-nix-uranium-mine-challenge)] the NRC on its efforts to toss the case, pointing out that there was no final decision on the entire underlying proceeding and there are ongoing discussions and negotiations to cure the deficiencies identified by the ASLB and sustained by the commission.

Then, in a May order, the D.C. Circuit referred the NRC's dismissal bid to the appellate panel that will consider the merits of the dispute, directing the parties to incorporate their arguments concerning whether the row should be nixed into their briefs.

According to Powertech parent company Azarga Uranium Corp.'s website, construction on the Dewey-Burdock project has not yet begun, as certain required licenses and permits are still being acquired.

The Oglala Sioux has said that the land the project would sit upon, which lies in South Dakota's Fall River and Custer counties, is within the tribe's traditional aboriginal territory and full of cultural and historic resources, including burial sites.

Jeffrey C. Parsons of the Western Mining Action Project, who represents the tribe, told Law360 on Wednesday that, "from the start, the tribe has simply sought NRC compliance with the federal laws aimed at protecting Sioux cultural resources and ground water quality. Unfortunately, NRC staff's and Powertech's refusals to follow the law or rescind the NRC license even where violations are found forces the tribe to continue its fight in federal court against this ill-advised project."

Representatives for Powertech said they were reviewing the tribe's brief. Representatives for the NRC declined to comment.

The tribe is represented by Jeffrey C. Parsons of the Western Mining Action Project and Travis E. Stills of Energy & Conservation Law.

The federal government is represented by NRC Solicitor Andrew P. Averbach and Senior Attorney James E. Adler, as well as Lane N. McFadden of the [[HYPERLINK "https://www.law360.com/agencies/u-s-department-of-justice"](https://www.law360.com/agencies/u-s-department-of-justice)].

Powertech is represented by Anthony J. Thompson and Christopher S. Pugsley of Thompson & Pugsley PLLC.

The case is Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission et al., case number [[HYPERLINK "https://www.law360.com/cases/58ae1cab860f601260000175"](https://www.law360.com/cases/58ae1cab860f601260000175)], in the U.S. Appeals Court for the District of Columbia Circuit.

NRC Tells DC Circ. Tribe's Mine License Row Is Premature

Share us on: By [[HYPERLINK "https://www.law360.com/articles/953291/nrc-tells-dc-circ-tribe-s-mine-license-row-is-premature"](https://www.law360.com/articles/953291/nrc-tells-dc-circ-tribe-s-mine-license-row-is-premature)]

Law360, New York (August 10, 2017, 7:53 PM EDT) -- The U.S. [[HYPERLINK "https://www.law360.com/agencies/nuclear-regulatory-commission"](https://www.law360.com/agencies/nuclear-regulatory-commission)] argued Thursday that the D.C. Circuit lacks jurisdiction to consider the [[HYPERLINK "https://www.law360.com/agencies/ogla-sioux-tribe"](https://www.law360.com/agencies/ogla-sioux-tribe)]'s challenge to a license issued to a company for a proposed uranium mine in South Dakota because the underlying administrative proceedings are ongoing and no final decision has

Commented [SV7]: August 10, 2017

yet been rendered.

The NRC responded to a brief in which [[HYPERLINK "https://www.law360.com/articles/939322/tribe-asks-dc-circ-to-undo-license-for-sd-uranium-mine"](https://www.law360.com/articles/939322/tribe-asks-dc-circ-to-undo-license-for-sd-uranium-mine)] that the agency flouted federal law in issuing a license allowing Powertech (USA) Inc. to conduct uranium mining and processing operations and dispose of radioactive waste despite having found a lack of compliance with the National Environmental Policy Act's cultural resource impacts analysis requirement and the National Historic Preservation Act's government-to-government consultation requirement.

The NRC said the tribe is asking the circuit court to review a nonfinal order, pointing out that administrative proceedings about Powertech's license "remain open and pending" for the resolution of the tribe's resource and consultation contentions.

In fact, the NRC said, it had indeed affirmed its Atomic Safety and Licensing Board's finding that the agency's compliance with the NEPA and NHPA requirements was inadequate, so the proceeding was "expressly" left open to fix the deficiencies with input from the tribe.

"To the extent the tribe suggests that Powertech's existing license mandates judicial review now, the tribe has had the right to seek a stay of the Powertech license from NRC and to petition for immediate review should it disagree with an NRC stay denial decision," the agency said.

"Instead, the tribe seeks full merits review of the NRC licensing decision while in active administrative litigation on that very decision at NRC," the agency continued. "This petition is therefore incurably premature, and the court should dismiss it for lack of jurisdiction."

Even if the circuit court does have jurisdiction, it should still rule in the NRC's favor, the agency said, arguing that the tribe has failed to acknowledge the reasons for leaving Powertech's license intact despite the NEPA and NHPA issues.

"The board and commission reasons center on the tribe itself bearing some responsibility for the identified deficiencies (which pertain to the project's impacts on the tribe's own cultural resources) and the fact that vacating a license due to an identified procedural deficiency is not required absent demonstrated harm or prejudice from leaving the license in place," the NRC said.

Travis E. Stills of Energy & Conservation Law, who represents the tribe, told Law360 on Thursday that "the NRC staff is obviously desperately trying to avoid any kind of court review of its practice of issuing licenses for activities that create radioactive hazards and then doing the analysis sometime in the future."

He added that the NRC has a "troubling habit" of standing by "an applicant or a producer who they've actually found didn't provide what was necessary to comply with the law and then instead trying to blame the people that are trying to have protection under environmental and historic preservation laws."

Representatives for the NRC and Powertech could not immediately be reached for comment.

According to Powertech parent company Azarga Uranium Corp.'s website, construction on the contested so-called Dewey-Burdock in-situ uranium recovery project has not yet begun, as certain required licenses and permits are still being acquired.

The Oglala Sioux has said that the land the project would sit upon, which lies in South Dakota's Fall River and Custer counties, is within the tribe's traditional aboriginal territory and full of cultural and historic resources, including burial sites.

The NRC has previously [[HYPERLINK "https://www.law360.com/articles/903470/nrc-says-ogla-lasioux-uranium-mine-challenge-is-premature"](https://www.law360.com/articles/903470/nrc-says-ogla-lasioux-uranium-mine-challenge-is-premature)] the tribe's D.C. Circuit challenge. Powertech, which has intervened, [[HYPERLINK "https://www.law360.com/articles/906773/powertech-backs-feds-bid-to-nix-uranium-mine-challenge"](https://www.law360.com/articles/906773/powertech-backs-feds-bid-to-nix-uranium-mine-challenge)] to support the agency, saying that there was no final decision on the entire underlying proceeding and there are ongoing discussions and negotiations to cure the deficiencies identified by the ASLB and sustained by the commission.

But in May, the D.C. Circuit referred the NRC dismissal request to the appellate panel that will consider the merits of the dispute, directing the parties to incorporate their arguments concerning whether the row should be nixed into their briefs.

Among other things, in its June brief, the tribe claimed that the NRC failed to adequately scrutinize effects associated with storing, moving and disposing radioactive waste, failed to require the collection of baseline water quality data and failed to mandate a requisite discussion of means for mitigating the impact on cultural sites and the environment and how effective those means are.

The tribe is represented by Jeffrey C. Parsons of the Western Mining Action Project and Travis E. Stills of Energy & Conservation Law.

The NRC is represented by Solicitor Andrew P. Averbach and senior attorney James E. Adler, as well as Lane N. McFadden of the [[HYPERLINK "https://www.law360.com/agencies/u-s-department-of-justice"](https://www.law360.com/agencies/u-s-department-of-justice)].

Powertech is represented by Anthony J. Thompson and Christopher S. Pugsley of Thompson & Pugsley PLLC.

The case is Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission et al., case number [[HYPERLINK "https://www.law360.com/cases/58ae1cab860f601260000175"](https://www.law360.com/cases/58ae1cab860f601260000175)], in the U.S. Appeals Court for the District of Columbia Circuit.